IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No. 19328 of 2006

Date of Decision: December 7, 2006

Mahesh

…..Petitioner

Vs.

State of Haryana and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR.

HON'BLE MR. JUSTICE M.M.S. BEDI.

Present:- Mr. Surender Deswal, Advocate
for the petitioner.

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M.M.KUMAR, J. (ORAL)

The services of the petitioner were retrenched under Section 25-F of the Industrial Disputes Act, 1947, (for brevity 'the Act'), vide order dated August 21, 1997 (P-1). However, in the retrenchment order it was stipulated that in case of any future vacancy to be filled up in the cadre of Mali-cum-Chowkidar, on which post the petitioner was working, his case for re-employment was to be considered as per Section 25-H of the Act.

The aforementioned order of retrenchment admittedly has been challenged before the Labour Court and in that regard, reference is pending in the Labour Court, Gurgaon, as is evident from the reply to the legal notice sent by respondents on October 27, 2006 (P-5). The only question raised in the instant petition is that the petitioner deserves to be reemployed in pursuance to the stipulation made in the retrenchment order, that as per Section 25H of the Act his case would be considered for re-employment as and when any vacancy in the cadre of Mali-cum-Chowkidar is filled up. On the allegation that a number of persons have been appointed on Class IV posts of Mali-cum-Chowkidar on September 15, 2006 (P-2), the petitioner has approached this Court that his case deserves to be considered.

After hearing the learned counsel at some length, we are of the view that once the petitioner has not accepted the retrenchment and has challenged the same by invoking the jurisdiction of Labour Court then the whole issue is pending consideration of the Labour Court. The reply dated October 27, 2006 (P-5) send by the respondents to the legal notice of the petitioner does not call for any interference warranting exercise of jurisdiction by this Court for issuance of Mandamus to the respondents to consider his case under Section 25-H of the Act because the petitioner has disputed the question of his retrenchment itself. Once his retrenchment is in dispute, then the question of considering his case for re-employment would not arise. Moreover, such like issues could easily be raised by the petitioner before the Labour Court where the reference is pending. Therefore, we find that the writ petition merits dismissal. Accordingly, the writ petition fails

and the same is dismissed. However, the petitioner is at liberty to raise the issue before the Labour Court concerning the whole retrenchment order dated August 21, 1997 (annexure P-1), if reference in that regard has been made.

(M.M.KUMAR)
JUDGE

December 7, 2006
sanjay

(M.M.S.BEDI)
JUDGE